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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,163	03/08/2001	Christopher Keith	125525	1129

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EXAMINER	
GRAHAM, CLEMENT B	

ART UNIT	PAPER NUMBER
3691	

MAIL DATE	DELIVERY MODE
04/02/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/802,163	KEITH, CHRISTOPHER	
	Examiner	Art Unit	
	Clement B. Graham	3691	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 January 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-29*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 1/15/2010
13. ☐ Other: _____.

/Alexander Kalinowski/
Supervisory Patent Examiner, Art Unit 3691

/Clement B Graham/
Examiner, Art Unit 3691

Applicant's states that an agreement was reached that applicant should respond to the Office Action and reiterate those arguments in view of which the finality of the Office Action should be withdrawn.

In regards Applicant's Arguments that Serkin does not support prima facie case of obviousness basis of rejection" and Serkin and Madoff fail to teach or suggest "receiving input from a market participant at a market participant's computer, wherein the market participant is a trading party participating in the market with other market participants, wherein the input provides a price for a side of a trade at the market, and wherein the input satisfies a market-related condition, and automatically, at the market participant's computer, receiving from the market a new contra-side best market price for the trade in advance of the other market participants as a result of satisfying the market-related condition and only while the market-related condition is satisfied by the input received at the market participant's computer and "market-related condition and The Office Action did not identify which aspect of Madoffs disclosure constitutes the "market-related condition" claimed in Claim 1 that the input must satisfy for the market participant's computer to receive a new contra-side best market price in advance of the other market participants and While the foregoing description is not necessarily agreed as accurately representing the teachings of Madoff, applicant nevertheless submits that the foregoing description has no bearing on the patentability of Claim 1. The above description does not indicate a teaching or suggestion of the elements of Claim 1 in which "a new contra-side best market price for the trade" is received at a market participant's computer "in advance of the other market participants as a result of satisfying the market-related condition and only while the market-related condition is satisfied by the input received at the market participant's computer and price that any of the market participants' have offered to take to sell," or "for a buy side of the trade at the market, the best market price is the highest bid price that any of the market participants' have offered to pay to buy and Contrary to the assertions made in the Office Action, these paragraphs of Madoff actually support applicant's assertion that Madoff fails to teach or suggest the elements recited in Claim 1. The process disclosed by Madoffs process simply tries to match newly received orders with other orders in a conventional fashion. Orders received by the process 100 are exposed "to the crowd, i.e., potential responders," at the same time. See paragraph [0055], lines 5-7, quoted above. Because Serkin and Madoff do not disclose or suggest all of the elements of Claim 1, there is no combination of Serkin and Madoff that renders Claim 1 obvious. Applicant therefore submits that a prima facie basis for rejection of Claim 1 has not been established. The rejection of Claim 1 should be withdrawn.

In response to Applicant's statement of an agreement was reached with the Examiner that applicant should respond to the Office Action and reiterate those arguments in view of which the finality of the Office Action should be withdrawn is misrepresented, because the Examiner indicated to Applicant's representative in is response to the after final rejection to reiterate those arguments and the examiner would further consider is arguments during the examining of the after final amendment or response.

In response to Applicant's arguments that Serkin does not support prima facie case of obviousness basis of rejection" , Examiner respectfully submits that obviousness is not determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977F. 2d 1443, 1445,24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783F.2d 1038, 1039, 228 USPQ* 685, 686 (Fed. Cir.1992); In re Piaseckii, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir.1984); In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Using this standard, the Examiner respectfully submits that he has at least satisfied the burden of presenting a prima facie case of obviousness, since he has presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and the motivations for combinations that fairly suggest Applicant's claimed invention. Note, for example, in the instant case, the Examiner respectfully notes that each and every motivation to combine the applied references are accompanied by select portions of the respective reference(s) which specially support that particular motivation and /or an explanation based on the logic and scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness. As such, it is not seen that the Examiner's combination of references is unsupported by the applied prior art of record. Rather, it is respectfully submitted that explanation based on the logic and scientific reasoning of one of ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner, Ex pane Levengood, 28 USPQ2d 1300(Bd. Pat. App &.,4/293 Therefore the combination of reference is proper and the rejection is maintained.

In response to Applicant's arguments on the features Serkin and Madoff fail to teach or suggest the examiner disagrees with Applicant's because these features were taught within the combinations of teachings as stated.

Serkin teaches under control of instructions that are executed by one or more computer processors(see column 1 para 0003 and para 0006 and column 4 para 0054 and column 5 para 0060 and column 6 para 0073 and column 7 para 0080) receiving input from a market participant at a market participant's computer, wherein the market participant is a trading party participating in the market with other market participants, wherein the input provides a price for a side of a trade at the market, and wherein the input satisfies a market-related condition, and automatically (see column 1 para 0003 and para 0006 and column 4 para 0054 and column 5 para 0060 and column 6 para 0073 and column 7 para 0080).

Madoff discloses according to an aspect of the invention, a method of auctioning products over a distributed networked computer system is provided. The method is executed over the system and includes entering an order for a product. The order can specify a price. The price can be a fixed price, a relative price or a market price. The order also specifies a quantity and an exposure time. The process also includes entering a response to an order, the response specifying a price, price improvement, and quantity and matching the order with the response in accordance with the exposure time specified by the order.(Note abstract and see para 0006-0011 and para 0055-0057 and 062).

It is obviously clear that Applicant's claimed features were taught within Serkin and Madoff, because Serkin the receiving of data receiving and the transmitting of data between two parties in trading information and the data consistent of price for a one side of a trade at the market based on satisfying conditions automatically and the receiving step in Madoff of receiving from the market the best price based on market conditions would have been capable and able to facilitate trading.

Further Applicants claims states" facilitating trading in the preamble and receiving input from one market participant computer to another market participant computer, wherein the input provides a price for one side of a trade based on a on market related conditions and at the market participant computer a best price is receive based on market related conditions, its unclear as to what is done with the data receive and transmitted because based on the facilitating of trading at the market stated in the preamble no trade is being executed and regardless of having the best price information it is useless if nothing is done with the information.

Further Applicants arguments do not overcome the final rejection and thefinal rejection is maintained.